

ARKANSAS SUPREME COURT

No. CR 04-1208

NOT DESIGNATED FOR PUBLICATION

ARTHUR LAMON JOYNER
Petitioner

VS.

STATE OF ARKANSAS
Respondent

Opinion Delivered May 25, 2006

PRO SE MOTION FOR RULE ON CLERK
[CIRCUIT COURT OF PULASKI COUNTY, CR
2003-407, HON. JOHN B. PLEGGE, JUDGE]

MOTION DENIED

PER CURIAM

On July 25, 2003, judgment was entered reflecting that Arthur Lamon Joyner had been found guilty in a bench trial of aggravated robbery, theft of property, and misdemeanor fleeing. An aggregate sentence of 120 months' imprisonment was imposed. The judgment and commitment order indicated that petitioner was advised of his right to appeal from the judgment, but no appeal was taken.

In 2004, petitioner sought leave from this court to proceed with a belated appeal pursuant to Rule 2(e) of the Rules of Appellate Procedure--Criminal, which permits a belated appeal in a criminal case in some instances. The motion was denied. *Joyner v. State*, CR 04-1208 (Ark. January 6, 2005) (*per curiam*). Petitioner subsequently asked that this court reconsider the request to proceed with a belated appeal. The motion for reconsideration was also denied. *Joyner v. State*, CR 04-1208 (Ark. February 3, 2005) (*per curiam*).

On May 4, 2006, petitioner filed the instant *pro se* motion for rule on clerk in which he asks this court to permit the filing of a petition for writ of *certiorari* as a means of seeking leave yet again

to proceed with a belated appeal from the judgment of conviction.¹ As it is clear that the petition for writ of *certiorari* is intended as a second motion for belated appeal and, as such, does not comport with the prevailing rules of procedure, the motion for rule on clerk is denied.

Motions for belated appeal are filed pursuant to Rule 2(e) of the Rules of Appellate Procedure--Criminal. This court has held that a convicted defendant is not entitled to proceed under Rule 2(e) with a subsequent motion after a request to proceed with a belated appeal has been denied. *Hughes v. State*, 284 Ark. 177, 680 S.W.2d 101 (1984) (*per curiam*). A petition for writ of *certiorari* is not available to the convicted defendant to circumvent Rule 2(e). Moreover, even if this court permitted a second motion for belated appeal, the rule provides that no request for belated appeal will be entertained more than eighteen months after the judgment of conviction was entered. It has been nearly three years since petitioner was convicted.

Motion denied.

¹For clerical purposes, the motion for rule on clerk was filed under the docket number assigned to the original motion for belated appeal, CR 04-1208.